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MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM : Director, Office of External Affairs

SUBJECT : Your Questions on the Congressional Coordination of Executive Order 12036

1. This memorandum responds to your questions on the coordination of Executive Order 12036: a) whether or not the old Executive Order 12036 was coordinated with Congress by the CIA; and 2) whether it is correct that the charter process and the Executive Order process ran parallel with Congress being consulted on both items.

2. A review of the few files still available in our registry, and a conversation with a former OGC attorney (now at DoJ) who was involved in both processes, confirm the following information:

(a) A White House memorandum dated 10 May 1977 from Mr. Brzezinski to The President concerning the President's upcoming meeting with SSCI Members states that the purpose of the meeting is:

"To establish substantive rapport with the Committee and agreement on the basic approach to be taken by the Administration and the Congress on the development of intelligence legislation."

Mr. Brzezinski goes on to suggest that the President advise the SSCI Members that:

(1) "The Administration's study of the Intelligence Community is not yet completed while the Committee's staff has already begun drafting legislation. Our efforts must be complementary rather than competitive."

(2) "The Administration will not act unilaterally. Once our study is completed, we will move only in the closest consultation with the Congress to revise the existing Executive Order on foreign intelligence activities (E.O. 11905) if that should be required in addition to legislative initiatives."

(b) A 8 June 1977 CIA memorandum states:

..."We are looking at the provisions of Executive Order 11905 to determine what mix of legislation or Executive Order can best be utilized by the Administration and the Senate Select Committee in reaching agreement to establish charters for the Intelligence Community."

(c) A 4 August 1977 CIA memorandum states:

..."Certain problem areas identified... would have to be dealt with by legislation...(and)... certain aspects of these problems, could be and should be supplemented by guidelines in an Executive Order."

(d) A 15 August 1977 CIA memorandum on a meeting with a member of the SSCI staff:

..."Mr. Maxwell made a strong argument... in favor of allowing the SSCI to have an input into the process of finalizing a new Executive Order in line with the President's decisions on PRM-11. (He) also stated it would be to the advantage of all to at least mutually identify problem areas as early as possible in the process of developing new legislation, and that being privy to the "thinking" of the Executive on the drafting of a new order would be helpful in this regard. Mr. Maxwell apparently envisages some SSCI input in the Executive Order drafting process."

3. On 15 August 1977, DoD and the D/DCI/IC jointly forwarded a memorandum attaching a draft of the Executive Order--also dated 15 August--to all members of the Intelligence Community. However, the file also shows and contains a draft of a prior Executive Order dated 11 August 1977 which was given to the Office of the General Counsel (OGC), CIA, with a number of recommended changes submitted by the SSCI for incorporation. There is no indication as to who gave the SSCI this draft Executive Order or how it got to OGC. On 18 August 1977 OGC forwarded a memorandum to OLC, stating, in part:

"Attached is the SSCI mark-up of the prior draft of the revision of Executive Order 11905. Most of the SSCI comments appear to be negotiable. The staff members are very concerned regarding the nature and extent of any changes in Section 5. The staff is drafting a version of that section and would like to see it if any change is to be made."

4. On 5 September 1977 the DoD's General Counsel forwarded to the NSC the latest draft of the proposed Executive Order with the statement that:

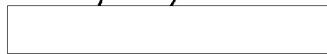
"This draft incorporates a number of changes to the 15 August 1977 draft requested by the staff of the Senate Select Committee on Intelligence."

It specifically mentions 14 changes that were made, plus a number of other word changes made to accommodate the staff's concerns.

5. Finally, on 26 October, in discussions with the White House staff, a CIA official recommended that the White House staff should give considerable attention to the statement which the President will issue when he signs the new Executive Order..."(it) should be carefully worded to include the coordination between the Executive Branch and the Congress, specifically the SSCI and noting HPSCI in the statement."

6. It is apparent that the Executive and Legislative Branches worked together to produce the Executive Order and the proposed Charters legislation. Although it cannot be determined who actually involved the SSCI, a former OGC attorney recollects that the SSCI made about 95 recommendations for changes in the proposed Executive Order, which he believes the SSCI received from the National Security Council. A draft Executive Order is in our files which contains the SSCI recommended changes, and is available for your review.

/s/

  
Director, Office of External Affairs

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